

**KELLEY DRYE & WARREN LLP**

A LIMITED LIABILITY PARTNERSHIP

**WASHINGTON HARBOUR, SUITE 400**

**3050 K STREET, NW**

**WASHINGTON, DC 20007**

(202) 342-8400

FACSIMILE

(202) 342-8451

www.kelleydrye.com

JOHN J. HEITMANN

DIRECT LINE: (202) 342-8544

EMAIL: jheitmann@kelleydrye.com

NEW YORK, NY  
LOS ANGELES, CA  
HOUSTON, TX  
AUSTIN, TX  
CHICAGO, IL  
PARSIPPANY, NJ  
STAMFORD, CT  
BRUSSELS, BELGIUM

AFFILIATE OFFICE  
MUMBAI, INDIA

March 1, 2017

**By ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: **STS Media, Inc. d/b/a FreedomPop Petition for Designation as a  
Lifeline Broadband Provider; WC Docket Nos. 09-197, 11-42**

Dear Ms. Dortch:

STS Media, Inc. d/b/a FreedomPop (FreedomPop or the Company) by and through the undersigned counsel, hereby submits this letter to request that the Wireline Competition Bureau (Bureau) treat its pending Petition for Streamlined Designation as a Lifeline Broadband Provider (LBP) Eligible Telecommunications Carrier (ETC) (Petition) as a petition for designation as a Lifeline-only ETC in the twelve states that do not exercise jurisdiction over wireless resellers for the purpose of Lifeline-only ETC designation. Specifically, FreedomPop requests the following:

1. Treatment of the Petition as a request for designation as a wireless Lifeline-only ETC<sup>1</sup> and a request for Compliance Plan approval.<sup>2</sup>
2. Limitation of the Petition to request ETC designation in the states of Alabama, Connecticut, Delaware, the District of Columbia, Florida, Maine, New Hampshire,

---

<sup>1</sup> Alternatively, FreedomPop requests renewed LBP designation by the Bureau, including a designation that is limited to the twelve federal ETC jurisdictions and which confers upon FreedomPop approved Compliance Plan status. FreedomPop is prepared to move forward with Lifeline broadband offerings as set forth in the Petition, including a bundled broadband service offering that includes voice.

<sup>2</sup> As explained below, confirmation by the Bureau that approval of the Petition also serves as approval of a FreedomPop Compliance Plan is consistent with the Lifeline Modernization Order and will allow FreedomPop to spur competition in the national market for Lifeline services by seeking additional ETC designations from individual state regulatory commissions.

Marlene Dortch  
March 1, 2017  
Page Two

New York, North Carolina, Tennessee, Texas and the Commonwealth of Virginia. FreedomPop has not sought designation for areas governed by a sovereign Tribal entity in these states.<sup>3</sup>

FreedomPop respectfully submits that these requests are consistent with the Federal Communications Commission's (Commission's) rules and orders for the Lifeline program, and therefore respectfully submits that the Bureau should grant its Petition as modified by this letter request expeditiously. Allowing FreedomPop to offer its innovative products and services to low-income consumers will further the Commission's objective of closing the digital divide across the nation.

### ***Company Background***

FreedomPop is a new economy Internet company that was founded on the belief that "the Internet is a right, not a privilege." FreedomPop is a disruptive technology company that leverages wireless and Internet technologies to enable a private sector solution to bridge the digital divide with its "freemium" wireless business model. With more than 1.1 million customers in the United States and Europe, FreedomPop is not now and does not intend to be a Lifeline-only company. Today, nearly one in three consumers who want access to FreedomPop's service cannot get it because they do not have a credit card, cannot afford to purchase a device or both. Because most of these would-be subscribers are Lifeline-eligible, the Lifeline subsidy could serve as the customer's form of payment. For this market segment, FreedomPop is willing to commit to providing a 4G LTE device at no charge.

Because Lifeline would be an incremental element to the Company's business, FreedomPop already has built a hyper-compliant platform that minimizes risk by using third-party resources to carefully vet subscriber identity and eligibility documentation, and by avoiding processes and scenarios that introduce uncertainty or a heightened risk for points of failure. For example, FreedomPop does not intend to utilize the Universal Service Administrative Company's TPIV and address exceptions processes until they are reviewed and deemed acceptable by the Commission's new leadership. Nor will the Company accept enrollments based on the presence of a benefit qualifying person in the same household prior to

---

<sup>3</sup> FreedomPop understands that limiting the Petition to the twelve federal ETC jurisdictions will temper concerns raised by the National Association of Regulatory Utility Commissioners (NARUC) and the State Petitioners in the appeal of the Lifeline Modernization Order currently pending before the U.S. Court of Appeals for the D.C. Circuit that the Commission may have exceeded its authority under the Communications Act when it established the streamlined LBP designation process. *See NARUC v. FCC*, No. 16-1170, Brief of Petitioner (filed Jan. 30, 2017) (NARUC Brief); *NARUC v. FCC*, No. 16-1170, State Petitioners' Opening Brief (filed Jan. 30, 2017). More importantly, FreedomPop is committed to collaborating with NARUC and its member states to ensure that state regulators maintain their important role in designating ETCs and overseeing Lifeline services offered by those ETCs to low-income consumers.

Marlene Dortch  
March 1, 2017  
Page Three

the issuance of additional guidance on that topic. The Company also will not employ a commission-based compensation structure in its Lifeline application, review and approval processes.

Upon designation as an ETC, FreedomPop will be poised to raise the bar for the Lifeline program in terms of disruptive innovation and a compliance platform designed to be conservative to the Universal Service Fund (USF) in that it elevates confidence and minimizes risks. In particular, FreedomPop's Internet-based approach allows the Company to connect more seamlessly with consumers, particularly those that reside in rural areas that are not reached by providers that focus on in-person enrollment and distribution.

***Treatment of the Petition as a Request for ETC Designation and a Request for Compliance Plan Approval***

The potential to achieve a uniform nationwide service area footprint via the Commission's streamlined LBP approval process matched well with FreedomPop's Internet-based means of interacting with consumers regardless of state or urban or rural location. In reliance on the streamlined LBP designation process, FreedomPop invested more than \$2 million to develop and leverage its Internet capabilities to more effectively identify and qualify Lifeline applicants and protect the USF from waste, fraud and abuse with best-in-class partners and processes. Following the Bureau's December 1, 2016 order approving FreedomPop's LBP request,<sup>4</sup> the Company dedicated substantial time and resources to ensure a rapid and smooth rollout of its Lifeline broadband services. As such, the Company was discouraged by the unforeseen decision by the Bureau to reverse the LBP designation and return the Petition to a non-streamlined pending status.<sup>5</sup> Nevertheless, FreedomPop intends to move forward with its plans to offer Lifeline services, and therefore is requesting that the Bureau treat its Petition as a request for limited designation as a Lifeline-only wireless ETC.

FreedomPop's Petition sets forth an entry-level broadband package that, in accordance with the Commission's broadband minimum service requirements, would offer consumers 500 megabytes (MB) of data as part of a feature package which includes up to six key features designed to enhance the Lifeline customer's data experience.<sup>6</sup> To be clear, however,

---

<sup>4</sup> See *In the Matter of Telecommunications Carriers Eligible for Universal Service Support, Petitions for Designation as a Lifeline Broadband Provider*, WC Docket Nos. 11-42, 09-197, Order on Reconsideration, DA 16-1325 (WCB rel. Dec. 1, 2016).

<sup>5</sup> See *In the Matter of Lifeline and Link Up Reform and Modernization, Telecommunications Carriers Eligible for Universal Service Support, Connect America Fund*, WC Docket Nos. 11-42, 09-197, Order on Reconsideration, DA 17-128 (rel. Feb. 3, 2017) (Revocation Order).

<sup>6</sup> These features include Data Rollover, Data Saver, VPN, Data Security, Data Compression and Ad Blocker. This package will retail for \$10.99 but will be available to qualified Lifeline customers at no cost. As explained in the Petition, FreedomPop will not require a credit card or

Marlene Dortch  
March 1, 2017  
Page Four

FreedomPop intends to include a voice component in its Lifeline plans.<sup>7</sup> Thus, FreedomPop is not seeking forbearance from the Commission's requirement to provide all supported services, including voice services.<sup>8</sup> FreedomPop respectfully submits that this commitment should be sufficient assurance that granting the Company's Petition will not result in potentially improper forbearance from the requirement to offer supported services.<sup>9</sup>

FreedomPop also respectfully requests that the Bureau confirm that approval of the Petition will also serve as approval of a FreedomPop Compliance Plan.<sup>10</sup> With approved Compliance Plan status, FreedomPop can then seek to expand its innovative Lifeline service offering to additional states by applying for similar wireless Lifeline-only ETC designations on a state-by-state basis in accordance with the requirements set forth by each state. Because its

---

conduct credit checks, factors that are often barriers confronting Lifeline-eligible consumers. The Lifeline broadband offering will include a Wi-Fi-enabled 4G/LTE capable smartphone or a hotspot device and the Company will also offer subscribers the option to purchase a hotspot-capable smartphone or the ability to bring their own device. Regardless of qualifying plan selected, Lifeline subscribers will be able to purchase additional units of data at a rate of \$0.02 per MB. In addition, Lifeline subscribers may choose to upgrade and apply a \$10 discount to any plan with a retail price higher than the \$10.99 plan and in the current rate structure a consumer would be able to purchase the Company's Unlimited Talk, Text & 1GB of Data for an additional \$10.

<sup>7</sup> For example, FreedomPop noted in a recent ex parte presentation to Commission staff that one of its proposed Lifeline plans would offer consumers 500 megabytes (MB) of free data, 200 voice minutes and 500 texts, which retails for \$10.99 but will be free to Lifeline subscribers. *See* Ex Parte Letter from John J. Heitmann, Counsel to STS Media, Inc. d/b/a FreedomPop, to Marlene H. Dortch, Secretary, Federal Communications Commission, WC Docket Nos. 09-197, 11-42 (Feb. 10, 2017). The Company is also considering offering plans that would include at least 500 minutes of voice service, in accordance with the Commission's minimum service standards for Lifeline-supported voice service.

<sup>8</sup> *See Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42, Third Report and Order, Further Report and Order, and Order on Reconsideration, FCC 16-38, ¶ 296 (rel. Apr. 27, 2016) (Lifeline Modernization Order).

<sup>9</sup> *See* NARUC Brief at 29-32.

<sup>10</sup> FreedomPop respectfully submits that its Petition, because originally filed and granted as an LBP request, satisfies the "designation criteria [which the Commission deemed] sufficient to prevent waste, fraud, and abuse in the program, so a separate obligation to obtain approval for a compliance plan is not necessary." Lifeline Modernization Order ¶ 281, n.739.

Marlene Dortch  
March 1, 2017  
Page Five

Internet-centric business model is geographically agnostic, FreedomPop intends to seek as broad a designation area as possible within a reasonable amount of time.<sup>11</sup>

As stated in the Petition, FreedomPop commits to complying with the Lifeline Modernization Order and all other requirements set forth in the Lifeline rules. Additionally, in the future, FreedomPop will implement any subsequent rule changes as of their effective date.

***Limitation of the Petition to the Twelve Federal ETC States***

FreedomPop is committed to working cooperatively with the Commission and the states to address the challenges faced by low-income Americans on the wrong side of the digital divide, and as such, included 49 jurisdictions in its original Petition. At this time, in order to begin the process of providing its innovative service to low-income consumers across the country, FreedomPop needs the Bureau to expeditiously approve its Petition in the states of Alabama, Connecticut, Delaware, the District of Columbia, Florida, Maine, New Hampshire, New York, North Carolina, Tennessee, Texas and the Commonwealth of Virginia.<sup>12</sup> Each of these jurisdictions has provided an affirmative statement to the Commission that it does not assert authority over wireless resellers for the purpose of Lifeline-only ETC designation. Copies of the statements from each of the states are attached as **Exhibit A**. As stated in the Petition, FreedomPop does not seek authority to provide service in areas governed by a sovereign Tribal entity in these states. Moreover, in the remaining 37 states identified in the Petition, FreedomPop is committed to following the ETC designation procedures set forth by the laws and regulations in those states.

---

<sup>11</sup> FreedomPop intends to seek designation from states that have a track record of, or affirmatively express a willingness to consider, granting ETC designations in a reasonable period of time and without undue delay and legal expense.

<sup>12</sup> Specifically, FreedomPop requests authority to offer Lifeline services in the zip codes in each of the twelve states identified in the attachment to the Petition. FreedomPop notes that these zip codes are limited to the areas in which the Company is able to offer broadband services pursuant to its agreements with its underlying service providers, but the Company could serve a substantially larger geographic area with voice services. Therefore, FreedomPop also respectfully requests that as part of its approval of the Petition, the Bureau authorize the Company to expand its service territory to additional non-Tribal zip codes in these states upon five days' advance notice to the Commission. *See* 47 C.F.R. § 54.202(e).

**KELLEY DRYE & WARREN LLP**

Marlene Dortch  
March 1, 2017  
Page Six

For all of the above-stated reasons, FreedomPop respectfully requests that the Bureau grant its Petition expeditiously.

Respectfully submitted,



John J. Heitmann  
Kelley Drye & Warren LLP  
3050 K Street, NW, Suite 400  
Washington, DC 20007  
(202) 342-8400

*Counsel to STS Media, Inc. d/b/a FreedomPop*

cc: Claude Aiken  
Amy Bender  
Brendan Carr  
Sarah Citrin  
Nick Degani  
Ryan Palmer  
Jay Schwarz

# **EXHIBIT A**

# Alabama Public Service Commission

## Orders

PINE BELT CELLULAR, INC. and PINE  
BELT PCS, INC.,

Joint Petitioners

PETITION: For ETC status and/or  
clarification regarding the jurisdiction of  
the Commission to grant ETC status to  
wireless carriers.

DOCKET U-4400

### ORDER

#### BY THE COMMISSION:

In a joint pleading submitted on September 11, 2001, Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively referred to as "Pine Belt") each notified the Commission of their desire to be designated as universal service eligible telecommunications carriers ("ETCs") for purposes of providing wireless ETC service in certain of the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. ("BellSouth") and Verizon South, Inc. ("Verizon"). The Pine Belt companies noted their affiliation with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama, but clarified that they exclusively provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services in their respective service areas in Alabama in accordance with licenses granted by the Federal Communications Commission ("FCC"). The pivotal issue raised in the joint pleading of Pine Belt companies is whether the Commission will assert jurisdiction in this matter given the wireless status of the Pine Belt companies.

As noted in the filing of the Pine Belt companies, state Commissions have primary responsibility for the designation of eligible telecommunications carriers in their respective jurisdictions for universal service purposes pursuant to 47 USC §214(e). The Commission indeed established guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997.

For carriers not subject to state jurisdiction, however, §214(e)(6) of the Telecommunications Act of 1996 provides that the FCC shall, upon request, designate such carriers as ETCs in non-rural



service territories if said carriers meet the requirements of §214(e)(1). In an FCC Public Notice released December 29, 1997 (FCC 97-419) entitled "Procedures for FCC designation of Eligible Telecommunications Carriers pursuant to §214(e)(6) of the Telecommunications Act", the FCC required each applicant seeking ETC designation from the FCC to provide, among other things, "a certification and brief statement of supporting facts demonstrating that the Petitioner is not subject to the jurisdiction of a state Commission."

The Pine Belt companies enclosed with their joint pleading completed ETC application forms as developed by the Commission. In the event the Commission determines that it does not have jurisdiction to act on the Pine Belt request for ETC status, however, the Pine Belt companies seek an affirmative written statement from the Commission indicating that the Commission lacks jurisdiction to grant them ETC status as wireless carriers.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services, and commercial mobile radio services is one that was rather recently addressed by the Commission. The Commission indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate, *in any respect*, cellular services, broadband personal communications services and commercial mobile radio services in Alabama. Given the aforementioned conclusions by the Commission, it seems rather clear that the Commission has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction. The Pine Belt companies and all other wireless providers seeking ETC status should pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

IT IS, THEREFORE, ORDERED BY THE COMMISSION, That the Commission's jurisdiction to grant Eligible Telecommunications Carrier status for universal service purposes does not extend to providers of cellular services, broadband personal communications services, and commercial mobile radio services. Providers of such services seeking Eligible Telecommunications Carrier status should accordingly pursue their requests through the Federal Communications Commission.

IT IS FURTHER ORDERED, That this Order shall be effective as of the date hereof.

DONE at Montgomery, Alabama, this 12<sup>th</sup> day of March, 2002.

ALABAMA PUBLIC SERVICE COMMISSION

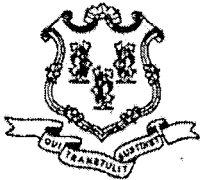
Jim Sullivan, President

Jan Cook, Commissioner

George C. Wallace, Jr., Commissioner

ATTEST: A True Copy

Walter L. Thomas, Jr., Secretary



**STATE OF CONNECTICUT**  
**DEPARTMENT OF PUBLIC UTILITY CONTROL**

November 8, 2010

In reply, please refer to:  
UR:PAP

Jacqueline Hankins  
Helein & Marashlian  
1420 Spring Hill Rd  
Suite 205  
McLean, VA 22102

Re: Request for Letter Clarifying Jurisdiction Over Wireless ETC Petitions

Dear Ms. Hankins:

The Department of Public Utility Control (Department) acknowledges receipt of your October 25, 2010 letter filed on behalf of Boomerang Wireless, LLC d/b/a Ready Mobile (Ready Mobile) requesting clarification as to whether the Department claims jurisdiction to designate wireless eligible telecommunications carriers (ETC) in Connecticut.

The Department does not regulate or license mobile carrier services' rates and charges and therefore, Ready Mobile should apply to the Federal Communications Commission for purposes of being designed an ETC.

Sincerely,

DEPARTMENT OF PUBLIC UTILITY CONTROL

Kimberley J. Santopietto  
Executive Secretary



STATE OF DELAWARE  
PUBLIC SERVICE COMMISSION

361 SILVER LAKE BOULEVARD  
CANNON BUILDING, SUITE 100  
DOVER, DELAWARE 19904

TELEPHONE: (302) 739 - 4247  
FAX: (302) 739 - 4849

July 15, 2009

L. Charles Keller, Jr.  
Wilkinson Barker Knauer, LLP  
2300 N Street, NW, Ste. 700  
Washington, DC 20037

RE: *Conexions LLC*

Dear Mr. Keller:

You have requested a statement confirming that the Delaware Public Service Commission ("PSC") lacks the jurisdiction to designate your client, Conexions, LLC ("Conexions"), as an Eligible Telecommunications Carrier ("ETC") under 47 U.S.C. § 214(e). You have represented that Conexions is a new mobile virtual network operator who seeks to participate in the FCC's Lifeline support program for qualifying low-income consumers.

Under state law, the Delaware PSC does not currently exercise any form of supervisory jurisdiction over wireless commercial mobile radio service ("CMRS") providers. *See* 26 *Del. C.* § 102(2) (excluding "telephone service provided by cellular technology, or by domestic public land mobile radio service" from the definition of "public utility"); 26 *Del. C.* § 202(c) (providing that the Delaware Commission has "no jurisdiction over the operation of domestic public land mobile radio service provided by cellular technology service or over rates to be charged for such service or over property, property rights, equipment of facilities employed in such service"). In fact, in granting ETC status in Delaware for Cellco Partnership d/b/a Bell Atlantic Mobile, the FCC accepted the Delaware PSC's confirmation at that time that it did not have jurisdiction under state law to designate CMRS providers as ETCs. *See Federal-State Joint Board on Universal Service; Cellco Partnership d/b/a Bell Atlantic Mobile Petition for Designation as an Eligible Telecommunications Carrier*; Memorandum Opinion and Order, 16 FCC Rcd. 39 (2000), at ¶¶ 3-4. There have been no changes to state law regarding the PSC's authority over CMRS providers since the *Cellco* decision.

L. Charles Keller, Jr.  
July 15, 2009  
Page 2

I hope this addresses your request for confirmation that the Delaware Public Service Commission does not have jurisdiction under state law to designate CMRS providers, such as Conexions LLC, as an ETC.

Sincerely,

A handwritten signature in cursive script, reading "Bruce H. Burcat". The signature is written in dark ink and is positioned above the printed name and title.

Bruce H. Burcat  
Executive Director

BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF DELAWARE

IN THE MATTER OF THE APPLICATION OF       )  
VERIZON DELAWARE INC., TO MODIFY THE       )  
LIFELINE SERVICE BY ADDING AN INCOME       )       PSC DOCKET NO. 05-016T  
QUALIFIER TO THE ELIGIBILITY CRITERIA       )  
(FILED JUNE 17, 2005)                        )

ORDER NO. 6736

This 11<sup>th</sup> day of October, 2005, the Commission determines and Orders the following:

1. In the jargon of the federal Lifeline/Link-Up program, Delaware is a "federal default State." Delaware has never, by either state law or state regulation, ordained, nor funded, a stand-alone program to provide discounts on basic telephone services charges for low-income subscribers. Consequently, it was not until 1997, when the Federal Communications Commission ("FCC") revamped the federal Lifeline/Link-Up program, that Delaware subscribers first became eligible for participation in the federal Lifeline program.<sup>1</sup> And given that in a "federal default State" only federally-raised monies are used to reimburse eligible carriers for the Lifeline and Link-Up discounts, it is the FCC, and not the state commission, that gets to call the tune about who should be eligible to receive these federally-subsidized price reductions.

2. Since 1997, Verizon Delaware Inc. ("VZ-DE") has been designated as an "eligible telecommunications carrier" and has offered

---

<sup>1</sup>See PSC Order No. 4684 (Dec. 16, 1997) (summarizing Delaware history and electing to allow "Tier 2" federal support to eligible Delaware subscribers).

federal Lifeline discounts on the federal list of supported services.<sup>2</sup> And even though in "default" States, Lifeline is almost an exclusively federal program, VZ-DE has, since 1997, filed at the State level, tariff provisions setting forth its Lifeline offerings.<sup>3</sup>

3. In 2004, the FCC changed some of the "eligibility" rules describing which subscribers may participate in the federal Lifeline/Link-Up program.<sup>4</sup> In particular, the 2004 amendments added additional programs to the list of "eligible" programs where participation confers federal default Lifeline/Link-Up eligibility.<sup>5</sup> The 2004 amendments also introduced an additional eligibility criteria premised on the subscriber's household income.<sup>6</sup> Eligible telecommunications carriers, such as VZ-DE, were given one year to implement this new, additional income-based eligibility criteria.<sup>7</sup>

4. To implement these changes prescribed by the FCC, VZ-DE initially filed revisions to the Lifeline and Link-Up portions of its

---

<sup>2</sup>See PSC Order No. 4680 (Dec. 17, 1997) ("ETC" designation for VZ-DE). See also PSC Dckt. No. 97-023T (initial Lifeline tariff filing by VZ-DE).

<sup>3</sup>From December 2000 through December 2003, VZ-DE offered, under its state tariff, an "expanded" Lifeline program for Delaware. The discounts under such program exceeded the Tiers 1 & 2 levels normally available in a default State. VZ-DE offered this expanded program to fulfill a condition imposed by the FCC in approving the Bell Atlantic-GTE merger. See PSC Order No. 6317 (Dec. 9, 2003) (explaining content and cause of this expanded Lifeline offering). Whether Delaware remained a "default State" during this period when VZ-DE subsidized the deeper discounts is an issue that need now be explored or resolved. This "expanded" program ended in December 2003.

<sup>4</sup>In the Matter of Lifeline and Link-Up, Report and Order and Further NPRM, 19 FCC Rcd. 8302 (FCC 2004) ("Lifeline Order").

<sup>5</sup>47 C.F.R. §§ 54.409(b) (Lifeline eligibility criteria in "default" State); 54.415(b) (Link-Up eligibility criteria in "default" State).

<sup>6</sup>47 C.F.R. §§ 54.409(b), 54.410 (Lifeline); 54.415(b), 54.416 (Link-Up).

<sup>7</sup>47 C.F.R. §§ 54.410(a)(ii), 54.416.

State tariff. These changes incorporated into the State tariff provisions the expanded list of "eligibility-conferring" programs.<sup>8</sup> At the same time, the Commission Staff began discussions with VZ-DE to determine whether, under the applicable federal default rules, it was appropriate for VZ-DE to continue to include in its State tariff Lifeline provisions language that conditioned Lifeline eligibility on the subscriber foregoing the ability to purchase many optional or vertical services.<sup>9</sup> Eventually, VZ-DE revised its State tariff Lifeline provisions to delete the questioned restrictions.<sup>10</sup> Then in June 2005, VZ-DE filed another Tariff revision to reflect its implementation of the household-income criteria for eligibility for Lifeline and Link-Up discounts.<sup>11</sup> Finally, on September 9, 2005, VZ-DE submitted another set of revised tariff sheets reflecting further textual revisions, as originally suggested by Staff. In part, these final changes sought to make the State tariff's description of how VZ-DE would administer its Lifeline/Link-Up program to more closely parallel the governing federal default rules.<sup>12</sup>

---

<sup>8</sup>See PSC Dckt. No. 04-017T (filed July 26, 2004; eff. July 27, 2004).

<sup>9</sup>That restriction - limiting Lifeline subscribers to a small group of designated vertical services - had been a continual part of VZ-DE's state-tariffed Lifeline offerings since 1997. In its Lifeline Order, the FCC expressed its belief that "any restriction on the purchase of vertical services may discourage qualified consumers from enrolling and may serve as a barrier to participation in the [Lifeline] program. Lifeline Order at ¶ 53.

<sup>10</sup>See PSC Dckt. No. 05-008T (filed April 8, 2005; eff. April 16, 2005).

<sup>11</sup>See PSC Dckt. No. 05-016T (filed June 17, 2005; eff. June 22, 2005).

<sup>12</sup>See PSC Dckt. No. 05-016T, amended tariff sheets filed on September 9, 2005 but with effective date of June 22, 2005).



5. The Commission enters this Order not so much to "approve" the various Lifeline filings made by VZ-DE but to recount the course of the filings made since the FCC changed its federal Lifeline/Link-Up program in 2004. Indeed, given that Delaware is a "default" State, VZ-DE's Lifeline/Link-Up offerings are governed more by the federal default rules than by any "approved" State tariff provision. Any State tariff provision that might conflict with a federal default rule would necessarily have to yield. However, the Commission will accept the Lifeline and Link-Up tariff filings lodged by VZ-DE. The Commission believes that VZ-DE's last submission (in September 2005) sets forth a Lifeline and Link-Up offering that is consistent with the federal default rules. However, the filing and acceptance of the State tariff provisions should not be seen as foreclosing any later challenge that VZ-DE's program falls short of the federal directives.

Now, therefore, **IT IS ORDERED:**

1. That, as explained in the body of this Order, the Commission accepts the tariff filings made by Verizon Delaware Inc., to implement its responsibilities to provide federal Lifeline and Link-Up in this "federal default" jurisdiction. In particular, the Commission now accepts the tariff revision filing made September 9, 2005 pertaining to the following leaves in P.S.C.-Del.-No. 1:

Section 20D, Fourteenth Revised Sheet 1 (Link-Up);

Section 20D, Fifth Revised Sheet 2 (Link-Up); and

Section 20E, Eighth Revised Sheet 2 (Lifeline).

2. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae  
Chair

\_\_\_\_\_  
Vice Chair

/s/ Joann T. Conaway  
Commissioner

/s/ Jaymes B. Lester  
Commissioner

/s/ Dallas Winslow  
Commissioner

ATTEST:

/s/ Norma J. Sherwood  
Acting Secretary



**Public Service Commission of the District of Columbia**  
**1333 H Street, N.W., 2nd Floor, West Tower**  
**Washington, D.C. 20005**  
**(202) 626-5100**  
**[www.dcpsc.org](http://www.dcpsc.org)**

March 27, 2012

**Via First Class Mail**

John J. Heitmann and Joshua T. Guyan  
Kelley Drye & Warren LLP  
Washington Harbour Suite 400  
3050 K Street, NW  
Washington, DC 20007-5108

Dear Mr. Heitmann and Mr. Guyan:

Thank you for your March 23, 2012 letter requesting information on whether the Public Service Commission of the District of Columbia ("Commission") designates wireless telecommunications carriers as eligible telecommunications carriers ("ETC") for the purposes of receiving federal universal service funding. Please be advised that, pursuant to section 34-2006(b) of the District of Columbia Code, the Commission does not have jurisdiction over wireless carriers. Thus, the Commission has no authority to designate wireless telecommunications carriers as ETCs.

Attached please find a copy of the relevant section of the District of Columbia Code for your information. Should you need anything further, please contact Lara Walt at 202-626-9191 or [lwalt@psc.dc.gov](mailto:lwalt@psc.dc.gov).

Sincerely,

A handwritten signature in black ink, which appears to read "Richard A. Beverly".

Richard A. Beverly  
General Counsel

Enclosure



D.C. Council Home

Home Search Help ©



## Welcome to the online source for the District of Columbia Official Code

### DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

DC ST § 34-2006

Formerly cited as DC ST 1981 § 43-1456

District of Columbia Official Code 2001 Edition Currentness

Division V. Local Business Affairs

Title 34. Public Utilities.

Subtitle V. Telecommunications.        Chapter 20. Telecommunications Competition.            ➔ **§ 34-2006. Exemptions.**

(a) This chapter shall not apply to cable television services performed pursuant to an existing cable television franchise agreement with the District of Columbia which is in effect on September 9, 1996. To the extent that a cable television company seeks to provide local exchange services within the District of Columbia, such company shall be regulated under the provisions of this chapter for their local exchange services.

(b) Pursuant to the federal Telecommunications Act of 1996, this chapter shall not apply to licensed or unlicensed wireless services authorized by the Federal Communications Commission operating in the District of Columbia.

(c) This chapter shall not:

- (1) Apply to the provision, rates, charges, or terms of service of Voice Over Internet Protocol Service or Internet Protocol-enabled Service;
- (2) Alter the authority of the Commission to enforce the requirements as are otherwise provided for, or allowed by, federal law, including the collection of Telecommunications Relay Service fees and universal service fees;
- (3) Alter the authority of the Office of Cable Television and Telecommunications with respect to the provision of video services in the District of Columbia; or
- (4) Alter the Commission's existing authority over the regulation of circuit-switched local exchange services in the District of Columbia.

#### CREDIT(S)

(Sept. 9, 1996, D.C. Law 11-154, § 7, 43 DCR 3736; June 5, 2008, D.C. Law 17-165, § 3(c), 55 DCR 5171.)

#### HISTORICAL AND STATUTORY NOTES

##### Prior Codifications

1981 Ed., § 43-1456.

Effect of Amendments

D.C. Law 17-165 added subsec. (c).

Legislative History of Laws

For legislative history of D.C. Law 11-154, see Historical and Statutory Notes following § 34-2001.

For Law 17-165, see notes following § 34-403.

References in Text

The federal Telecommunications Act of 1996, referred to in (b), is Pub. L. 104-104, which is codified throughout Title 47 of the United States Code.

DC CODE § 34-2006

Current through January 11, 2012

Copyright (C) 2012 By the District of Columbia. All Rights Reserved.

END OF DOCUMENT

© 2012 Thomson Reuters. No Claim to Orig. U.S. Govt. Works.

Docs In Sequence

---

**Westlaw, part of Thomson Reuters**

[© 2012 West](#) | [Privacy](#) | [Accessibility](#)



THOMSON REUTERS

COMMISSIONERS:  
ART GRAHAM, CHAIRMAN  
LISA POLAK EDGAR  
RONALD A. BRISÉ  
EDUARDO E. BALBIS  
JULIE I. BROWN

STATE OF FLORIDA



GENERAL COUNSEL  
S. CURTIS KISER  
(850) 413-6199

## Public Service Commission

October 24, 2011

Ms. Kasey C. Chow  
Lance J.M. Steinhart, P.C.  
Attorney At Law  
1725 Windward Concourse  
Suite 150  
Alpharetta, GA 30005


**Re: Undocketed – Q Link Wireless LLC's ETC Designation**

Dear Ms. Chow:

We received your October 18, 2011 letter advising that Q Link Wireless LLC, a commercial mobile radio service provider, wish to seek designation as an ETC in Florida. You also requested an affirmative statement that the Florida Public Service Commission no longer assert jurisdiction to designate commercial mobile radio service providers as eligible telecommunication carriers in Florida.

This letter acknowledges that the revisions to Chapter 364, Florida Statutes, changed the Commission's jurisdiction regarding telecommunications companies. I direct your attention to Chapter 364, Florida Statutes, for the proposition that the Federal Communications Commission, rather than this Commission is the appropriate agency to consider Q Link Wireless LLC's bid for ETC status.

Sincerely,

  
S. Curtis Kiser  
General Counsel

cc: Beth W. Salak, Director, Division of Regulatory Analysis  
Robert J. Casey, Public Utilities Supervisor, Division of Regulatory Analysis  
Adam J. Teitzman, Attorney Supervisor, Office of the General Counsel  
Ann Cole, Commission Clerk, Office of Commission Clerk

STATE OF MAINE  
PUBLIC UTILITIES COMMISSION

Docket No. 2013-00220

June 13, 2013

PUBLIC UTILITIES COMMISSION  
Amendment to Standards for Designating  
and Certifying Eligible  
Telecommunications Carriers Qualified to  
Receive Federal Universal Fund Support  
(Ch. 206)

ORDER ADOPTING  
AMENDED RULE AND  
STATEMENT OF FACTUAL  
AND POLICY BASIS

WELCH, Chairman; LITTELL and VANNOY, Commissioners

---

**I. SUMMARY**

By this Order, we adopt amendments to Chapter 206 of the Commission's rules which establishes standards for the designation and annual certification of Eligible Telecommunications Carriers (ETCs). After these amendments, the Commission will no longer certify carriers that apply for ETC designation for the sole purpose of offering Lifeline, Link-Up, or other low-income program benefits. Going forward, such carriers will apply to the Federal Communications Commission (FCC) for ETC designation.<sup>1</sup>

**II. BACKGROUND**

Chapter 206, adopted by the Commission on November 20, 2007, established standards for the designation and annual certification of ETCs. The rule was created, in large measure, to supplement the federal rules for ETC designation to account for distinctions between the services provided by wireline and wireless ETCs.

Since the adoption of Chapter 206, carriers seeking ETC designation for the sole purpose of offering Lifeline, link-Up, or other low-income benefits have entered the market in ever increasing numbers.<sup>2</sup> The majority of these carriers are pre-paid wireless service providers that resell the cellular telephone service of large national carriers. These pre-paid wireless ETCs typically provide a telephone handset and offer a set number of minutes (anywhere from 68 to 250 minutes per month) to low-income

---

<sup>1</sup> This rule is a routine technical rule as defined in Title 5, chapter 375, subchapter 2-A of the Maine Revised Statutes.

<sup>2</sup> The federal Lifeline program provides a subsidy from the federal Universal Service Fund (USF) to ETCs for the purpose of providing discounted telephone service to qualifying low-income consumers. Link-Up is a federal program that provides a subsidy from the federal USF to ETCs to offset the cost of telephone service installation for low-income customers. The FCC has recently eliminated the Link-Up program for all areas of the country except Tribal Lands.



customers at no charge to the customer. The service is made "free" to the low-income customer by the application of a federal universal service fund subsidy (currently \$9.25 per month) to the monthly charge on a customer's account; a charge that exactly equals the amount of the subsidy.

When drafted, Chapter 206 did not contemplate the pre-paid Lifeline business model or the designation of "Lifeline-only" ETCs. Since the proliferation of pre-paid wireless Lifeline-only ETCs, the FCC has taken steps to standardize the certification requirements for such carriers. Notably the FCC recently enacted a requirement that a non-facilities-based wireless ETC applicant have a "compliance plan" approved by the FCC before a state commission or the FCC may designate the applicant as an ETC.<sup>3</sup> Further, as there is no state subsidy for Lifeline service, the Commission expends substantial resources administering what is for all intents and purposes a federal program.

On April 9, 2013, we issued a Notice of Rulemaking (NOR) in this proceeding detailing the proposed amendments to Chapter 206. The Commission did not schedule a public hearing on this matter, but, pursuant to rulemaking procedures, we provided an opportunity for interested persons to request such a hearing; the Commission did not receive any public hearing requests. Additionally, we provided interested persons with an opportunity to provide written comments on the proposed amendments to Chapter 206. The deadline for submitting such comments was May 17, 2013; the Commission did not receive any comments by the deadline.

It is the view of the Commission that there is no longer any advantage to Maine consumers, financial or otherwise, for the Commission to certify ETCs that apply for the designation solely for the purpose of offering Lifeline service and receiving the federal Lifeline subsidy. Because the FCC will certify Lifeline-only ETCs, Maine consumers will continue to benefit from the availability of the services offered by those carriers.

In accordance with 5 M.R.S. § 8057-A(1), we stated in our NOR that we expect that there will be no fiscal impact from this rulemaking. Further, we stated that we expect that this rulemaking will not impose an economic burden on small businesses. We continue to believe this will be the case

### III. DISCUSSION OF THE RULE AMENDMENTS

#### A. Section 1: Purpose

In the NOR we proposed to amend Section 1 of the rule to specify that the Commission will not designate ETCs seeking such designation solely for the purpose of receiving support to provide Lifeline, Link-Up, or other low-income services, and that carriers seeking designation for that purpose must apply to the Federal

---

<sup>3</sup> In our experience, the majority of Lifeline-only wireless ETCs are non-facilities-based resellers.



Communications Commission. No comments were received regarding this proposed amendment. Therefore, we adopt the amendment to Section 1 of the rule without modification.

B. Section 2: Definitions

1. Applicant

In the NOR we proposed to amend the definition of "Applicant" to exclude carriers seeking ETC designation solely for the purpose of receiving support to provide Lifeline or other low-income services.

2. Lifeline/Link-Up

In the NOR we proposed eliminating the definition of "Lifeline/Link-up."

No comments were received regarding these proposed amendments. Therefore, we adopt these amendments to Section 2 of the rule without modification.

C. Section 3: Contents of Petition by Applicant

In addition to several non-substantive editorial changes, in the NOR we proposed eliminating the provision in Section 3 that requires ETC applicants to include in their application a statement that the ETC will advertise the availability of low-income programs such as Lifeline and Link-Up. No comments were received regarding this proposed amendment. Therefore, we adopt these amendments to Section 3 of the rule without modification.

D. Section 6: Annual Reports

In addition to several non-substantive editorial changes, in the NOR we proposed eliminating the requirement that Competitive ETCs annually certify that they have publicized the availability of low-income programs such as Lifeline and Link-Up.<sup>4</sup> No comments were received regarding this proposed amendment. Therefore, we adopt these amendments to Section 6 of the rule without modification.

E. Section 7: Applicability to Carriers Designated as ETCs Before the Effective Date of this Chapter

In the NOR we proposed eliminating a superfluous section requiring submission of information by ETCs that were designated prior to December 4, 2007.

---

<sup>4</sup> A Competitive ETC is an ETC that is not an Incumbent Local Exchange Carrier.

No comments were received regarding this proposed amendment. Therefore, we adopt this amendment to Section 7 of the rule without modification.

#### IV. ORDERING PARAGRAPHS

In light of the foregoing, we

#### O R D E R

1. That the attached Chapter 206 is hereby adopted;
2. That the Administrative Director shall notify the following of the final adoption of the attached rule:
  - a. All Local Exchange Carriers in the State of Maine;
  - b. All Eligible Telecommunications Carriers in Maine;
  - c. The Telephone Association of Maine;
  - d. All people who have filed with the Commission within the past year a written request for any Notice of Rulemaking.
3. That the Administrative Director shall send copies of this Order and the final rule:
  - a. The Secretary of State for publication in accordance with 5 M.R.S. § 8053(5); and
  - b. Executive Director of the Legislative Council.

Dated at Hallowell, Maine, this 13th day of June, 2013.

BY ORDER OF THE COMMISSION

/s/ Harry Lanphear

Harry Lanphear  
Administrative Director

COMMISSIONERS VOTING FOR:     Welch  
   Littell  
   Vannoy

## NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R.ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)-(4) and the Maine Rules of Appellate Procedure.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.

THE STATE OF NEW HAMPSHIRE

CHAIRMAN  
Thomas B. Getz

COMMISSIONERS  
Clifton C. Below  
Amy L. Ignatius

EXECUTIVE DIRECTOR  
AND SECRETARY  
Debra A. Howland



PUBLIC UTILITIES COMMISSION  
21 S. Fruit Street, Suite 10  
Concord, N.H. 03301-2429

Tel. (603) 271-2431

FAX (603) 271-3878

TDD Access: Relay NH  
1-800-735-2964

Website:  
[www.puc.nh.gov](http://www.puc.nh.gov)

March 28, 2011

**RE: ETC Certification in New Hampshire**

The federal Universal Service Fund (USF) was created by the Federal Communications Commission (FCC) to promote the availability of quality services at just and reasonable rates to all consumers including low-income customers and those in high cost areas and to increase nationwide access to advanced services in schools, libraries and rural health care facilities. To qualify for universal service funding a carrier must first be certified as an Eligible Telecommunications Carrier (ETC) by the state public utilities commission or, if the state does not assert this authority, by the FCC. *See* 47 U.S.C. §214 (e).

The New Hampshire Public Utilities Commission maintains authority to determine whether landline telecommunications carriers qualify as ETCs. Pursuant to New Hampshire RSA 362:6, the Commission has no jurisdiction over mobile radio communications services. Consequently, the state declines jurisdiction over the certification of wireless carriers as ETCs, leaving that responsibility to the FCC.

Sincerely,

A handwritten signature in black ink, appearing to read "F. Anne Ross".

F. Anne Ross  
General Counsel  
New Hampshire Public Utilities Commission



STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE  
THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350  
[www.dps.state.ny.us](http://www.dps.state.ny.us)

PUBLIC SERVICE COMMISSION

GARRY A. BROWN  
*Chairman*  
PATRICIA L. ACAMPORA  
MAURKEEN F. HARRIS  
ROBERT E. CURRY JR.  
JAMES L. LAROCCA  
*Commissioners*



PETER MCGOWAN  
*General Counsel*

JACLYN A. BRILLING  
*Secretary*

July 28, 2010

TO WHOM IT MAY CONCERN:

Re: i-wireless CMRS Jurisdiction

We have received a letter from i-wireless, LLC (i-wireless), requesting a statement that the New York State Public Service Commission does not exercise jurisdiction over CMRS providers for the purpose of making determinations regarding Eligible Telecommunications Carrier designations under section 214 (e)(6) of 47 U.S.C. In response to this request, please be advised that section 5 (6)(a) of the New York State Public Service Law provides that:

Application of the provisions of this chapter to cellular telephone services is suspended unless the commission, no sooner than one year after the effective date of this subdivision, makes a determination, after notice and hearing, that suspension of the application of provisions of this chapter shall cease to the extent found necessary to protect the public interest.

The New York State Public Service Commission has not made a determination as of this date that regulation should be reinstituted under section 5 (6)(a) of the Public Service Law. Consequently, based on the representation by i-wireless that it is a mobile virtual network operator reselling wireless services, i-wireless would not be subject to New York State Public Service Commission jurisdiction for the purpose of making an Eligible Telecommunications Carrier designation.

Very truly yours,

*Maurkeen J. McCauley*  
Maurkeen J. McCauley  
Assistant Counsel

*M. McCauley*

**STATE OF NORTH CAROLINA  
UTILITIES COMMISSION  
RALEIGH**

DOCKET NO. P-100, SUB 133c

BEFORE THE NORTH CAROLINA UTILITIES COMMISSION

In the Matter of  
Designation of Carriers Eligible for Universal )  
Carrier Support ) ORDER GRANTING PETITION

BY THE COMMISSION: On August 22, 2003, North Carolina RSA3 Cellular Telephone Company, d/b/a Carolina West (Carolina West), a commercial mobile radio service (CMRS) provider, filed a Petition seeking an affirmative declaratory ruling that the Commission lacks jurisdiction to designate CMRS carrier eligible telecommunications carrier (ETC) status for the purposes of receiving federal universal service support.

In support of its Petition, Carolina West stated that it was a CMRS provider authorized by the Federal Communications Commission (FCC) to provide cellular mobile radio telephone service in North Carolina, and that the FCC had clearly recognized that CMRS carriers such as Carolina West may be designated as ETCs. ETC status is necessary for a provider to be eligible to receive universal service support. Section 214(e)(6) of the Telecommunications Act provides that if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC is charged with making the ETC determination. The FCC has stated that, in order for the FCC to consider requests pursuant to this provision, a carrier must provide an "affirmative statement" from the state commission or court of competent jurisdiction that the state lacks jurisdiction to perform the designation. To date, several state commissions have declined to exercise such jurisdiction.

North Carolina has excluded CMRS from the definition of "public utility." See, G.S. 62-3(23). Pursuant to this, the Commission issued its Order Concerning Deregulation of Wireless Providers in Docket Nos. P-100, Sub 114 and Sub 124 on August 28, 1995, concluding that the Commission no longer has jurisdiction over cellular services. Accordingly, Carolina West has now requested the Commission to issue an Order stating that it does not have jurisdiction to designate CMRS carriers ETC status for the purposes of receiving federal universal service support.

WHEREUPON, the Commission reaches the following

**CONCLUSIONS**

After careful consideration, the Commission concludes that it should grant Carolina West's Petition and issue an Order stating that it lacks jurisdiction to designate ETC status

for CMRS carriers. As noted above, in its August 28, 1995, Order in Docket Nos. P-100, Sub 114 and Sub 124, the Commission observed that G.S. 62-3(23)), enacted on July 29, 1995, has removed cellular services, radio common carriers, personal communications services, and other services then or in the future constituting a mobile radio communications service from the Commission's jurisdiction. 47 USC 3(41) defines a "state commission" as a body which "has regulatory jurisdiction with respect to the intrastate operation of carriers." Pursuant to 47 USC 214(e)(6), if a state commission determines that it lacks jurisdiction over a class of carriers, the FCC must determine which carriers in that class may be designated as ETCs. Given these circumstances, it follows that the Commission lacks jurisdiction over CMRS services and the appropriate venue for the designation of ETC status for such services is with the FCC. Accord., Order Granting Petition, ALLTEL Communications, Inc., June 24, 2003.

IT IS, THEREFORE, SO ORDERED.

ISSUED BY ORDER OF THE COMMISSION.

This the 28th day of August, 2003.

NORTH CAROLINA UTILITIES COMMISSION

*Patricia Swenson*

Patricia Swenson, Deputy Clerk

1002303.01

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

April 11, 2003

IN RE:

APPLICATION OF ADVANTAGE CELLULAR  
SYSTEMS, INC. TO BE DESIGNATED AS AN  
ELIGIBLE TELECOMMUNICATIONS CARRIER

)  
)  
)  
)  
)

DOCKET NO.  
02-01245

---

ORDER

---

This matter came before Chairman Sara Kyle, Director Deborah Taylor Tate and Director Pat Miller of the Tennessee Regulatory Authority (the "Authority"), the voting panel assigned in this docket, at the regularly scheduled Authority Conference held on January 27, 2003, for consideration of the *Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier ("Application")* filed on November 21, 2002.

Background

Advantage Cellular Systems, Inc. ("Advantage") is a commercial mobile radio service provider ("CMRS") seeking designation as an Eligible Telecommunications Carrier ("ETC") by the Authority pursuant to 47 U.S.C. §§ 214 and 254. In its *Application*, Advantage asserts that it seeks ETC status for the entire study area of Dekalb Telephone Cooperative, Inc., a rural cooperative telephone company. Advantage maintains that it meets all the necessary requirements for ETC status and therefore is eligible to receive universal service support throughout its service area.

The January 27, 2003 Authority Conference

During the regularly scheduled Authority Conference on January 27, 2003, the panel of Directors assigned to this docket deliberated Advantage's *Application*. Of foremost consideration was the issue of the Authority's jurisdiction. The panel unanimously found that the Authority lacked



jurisdiction over Advantage for ETC designation purposes.<sup>1</sup>

This conclusion was implicitly premised on Tenn. Code Ann. § 65-4-104, which provides that:

The Authority has general supervisory and regulatory power, jurisdiction and control over all public utilities and also over their property, property rights, facilities, and franchises, so far as may be necessary for the purpose of carrying out the provisions of this chapter.

For purposes of Tenn. Code Ann. § 65-4-104, the definition of public utilities specifically excludes, with certain exceptions not relevant to this case, "[a]ny individual, partnership, copartnership, association, corporation or joint stock company offering domestic public cellular radio telephone service authorized by the federal communications commission."

The Authority's lack of jurisdiction over CMRS providers implicates 47 U.S.C. § 214(e), which addresses the provision of universal service. Where common carriers seeking universal service support are not subject to a state regulatory commission's jurisdiction, 47 U.S.C. § 214(e)(6) authorizes the Federal Communications Commission ("FCC") to perform the ETC designation.<sup>2</sup>

<sup>1</sup> This finding is not inconsistent with the Authority's decision in *In re Universal Service Generic Contested Case*, Docket 97-05233, *Interim Order on Phase I of Universal Service*, pp. 33-37 (May 20, 1998), in which the Authority required intrastate telecommunications carriers to contribute to the Intrastate Universal Service Fund including telecommunications carriers not subject to authority of the TRA. The decision in Docket No. 97-00838 was based primarily on 47 U.S.C. § 254(f) which authorizes states to adopt regulations not inconsistent with the Federal Communications Commission's rules on Universal Service and specifically requires every telecommunications carrier that provides intrastate telecommunications services to contribute to the preservation and advancement of universal service in that state. The *Interim Order* was issued prior to the effective date of 47 U.S.C. § 214(e)(6).

<sup>2</sup> 47 U.S.C. § 214(e)(6) states:

(6) Common carriers not subject to state commission jurisdiction

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable Federal and State law. Upon request and consistent with the public interest, convenience and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in the case of all other areas, designate more than one common carrier as an eligible telecommunications carrier for a service area designated under this paragraph, so long as each additional requesting carrier meets the requirements of paragraph (1). Before designating an additional eligible telecommunications carrier for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest.

As a matter of "state-federal comity," the FCC requires that carriers seeking ETC designation "first consult with the state commission to give the state commission an opportunity to interpret state law."<sup>3</sup> Most carriers that are not subject to a state regulatory commission's jurisdiction seeking ETC designation must provide the FCC "with an affirmative statement from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the designation."<sup>4</sup>

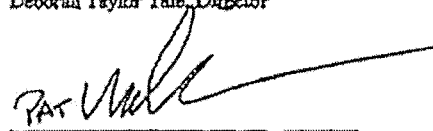
The panel noted that the FCC is the appropriate forum for Advantage to pursue ETC status pursuant to 47 U.S.C. § 214(e)(6). This Order shall serve as the above mentioned affirmative statement required by the FCC.

**IT IS THEREFORE ORDERED THAT:**

*The Application of Advantage Cellular Systems, Inc. To Be Designated As An Eligible Telecommunications Carrier is dismissed for lack of subject matter jurisdiction.*

  
Sara Kyle, Chairman

  
Deborah Taylor Tate, Director

  
Pat Miller, Director

<sup>3</sup> *In the Matter of Federal-State Joint Bd. on Universal Service*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 F.C.C.R. 12208, 12264, § 113 (June 30, 2000).

<sup>4</sup> *See id.* (The "affirmative statement of the state commission may consist of any duly authorized letter, comment, or state commission order indicating that it lacks jurisdiction to perform designations over a particular carrier.")



Control Number: 40561



Item Number: 8

Addendum StartPage: 0

**PROJECT NO. 40561**

**RULEMAKING TO AMEND §  
SUBSTANTIVE RULE 26.418 RELATING §  
TO DESIGNATION OF COMMON §  
CARRIERS AS ELIGIBLE §  
TELECOMMUNICATIONS CARRIERS §  
TO RECEIVE FEDERAL UNIVERSAL §  
SERVICE FUNDS §**

**PUBLIC UTILITY COMMISSION**

**OF TEXAS**

2012 NOV 21 AM 11:37  
FILED CLERK

**ORDER ADOPTING AMENDMENT TO §26.418  
AS APPROVED AT THE NOVEMBER 16, 2012 OPEN MEETING**

The Public Utility Commission of Texas (commission) adopts an amendment to §26.418, relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, with no changes to the proposed text as published in the August 31, 2012, issue of the *Texas Register* (37 TexReg 6874). The amendment will exclude commercial mobile radio service (CMRS) resellers from eligibility for designation by the commission as an eligible telecommunications carrier (ETC). Instead, a CMRS reseller will be able to seek designation as an ETC by the Federal Communications Commission (FCC). Project Number 40561 is assigned to this proceeding.

The commission did not receive any comments on the proposed amendment.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §51.001, which provides that it is the policy of this state to promote diversity of telecommunications providers and interconnectivity; encourage a fully competitive

telecommunications marketplace; and maintain a wide availability of high quality interoperable, standards-based telecommunications services at affordable rates.

Cross Reference to Statutes: PURA §§14.002 and 51.001.

**§26.418. Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds.**

- (a) **Purpose.** This section provides the requirements for the commission to designate common carriers as eligible telecommunications carriers (ETCs) to receive support from the federal universal service fund (FUSF) pursuant to 47 United States Code (U.S.C.) §214(e) (relating to Provision of Universal Service). In addition, this section provides guidelines for rural and non-rural carriers to meet the federal requirements of annual certification for FUSF support criteria and, if requested or ordered, for the disaggregation of rural carriers' FUSF support.
- (b) **Applicability.** This section applies to a common carrier seeking designation as an ETC, except for commercial mobile radio service (CMRS) resellers. A CMRS reseller may not seek designation from the commission, but instead may seek designation as an ETC by the Federal Communications Commission (FCC). This section also applies to a common carrier that has been designated by the commission as an ETC, including a CMRS reseller.
- (c) **Service areas.** The commission may designate ETC service areas according to the following criteria.
- (1) **Non-rural service area.** To be eligible to receive federal universal service support in non-rural areas, a carrier must provide federally supported services pursuant to 47 Code of Federal Regulations (C.F.R.) §54.101 (relating to

Supported Services for Rural, Insular, and High Cost Areas) throughout the area for which the carrier seeks to be designated an ETC.

- (2) **Rural service area.** In the case of areas served by a rural telephone company, as defined in §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan), a carrier must provide federally supported services pursuant to 47 C.F.R. §54.101 throughout the study area of the rural telephone company in order to be eligible to receive federal universal service support.

- (d) **Criteria for determination of ETCs.** A common carrier shall be designated as eligible to receive federal universal service support if it:

- (1) offers the services that are supported by the federal universal service support mechanisms under 47 C.F.R. §54.101 either using its own facilities or a combination of its own facilities and resale of another carrier's services; and
- (2) advertises the availability of and charges for such services using media of general distribution.

- (e) **Criteria for determination of receipt of federal universal service support.** In order to receive federal universal service support, a common carrier must:

- (1) meet the requirements of subsection (d) of this section;
- (2) offer Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E (relating to Universal Service Support for Low-Income Consumers); and

- (3) offer toll limitation services in accordance with 47 C.F.R. §54.400 (relating to Terms and Definitions) and §54.401 (relating to Lifeline Defined).

(f) **Designation of more than one ETC.**

- (1) Non-rural service areas. In areas not served by rural telephone companies, as defined in §26.404 of this title, the commission shall designate, upon application, more than one ETC in a service area so long as each additional carrier meets the requirements of subsection (c)(1) of this section and subsection (d) of this section.
- (2) Rural service areas. In areas served by rural telephone companies, as defined in §26.404 of this title, the commission may designate as an ETC a carrier that meets the requirements of subsection (c)(2) of this section and subsection (d) of this section if the commission finds that the designation is in the public interest.

(g) **Proceedings to designate ETCs.**

- (1) At any time, a common carrier may seek commission approval to be designated an ETC for a requested service area.
- (2) In order to receive support under this section for exchanges purchased from an unaffiliated carrier, the acquiring ETC shall file an application, within 30 days after the date of the purchase, to amend its ETC service area to include those geographic areas that are eligible for support.
- (3) If an ETC receiving support under this section sells an exchange to an unaffiliated carrier, it shall file an application, within 30 days after the date of the sale, to



amend its ETC designation to exclude from its designated service area those exchanges for which it was receiving support.

(h) **Application requirements and commission processing of applications.**

(1) **Requirements for notice and contents of application.**

(A) Notice of application. Notice shall be published in the *Texas Register*.

The presiding officer may require additional notice. Unless otherwise required by the presiding officer or by law, the notice shall include at a minimum a description of the service area for which the applicant seeks eligibility, the proposed effective date of the designation, and the following statement: "Persons who wish to comment on this application should notify the Public Utility Commission of Texas by (specified date, ten days before the proposed effective date). Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Public Utility Commission's Customer Protection Division at (512) 936-7120 or (888) 782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136, or use Relay Texas (800) 735-2989 to reach the commission's toll free number (888) 782-8477."

(B) Contents of application for each common carrier seeking ETC designation.

A common carrier that seeks to be designated as an ETC shall file with the commission an application complying with the requirements of this

section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission's Regulatory Division and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:

- (i) show that the applicant offers each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) (relating to Universal Service) either using its own facilities or a combination of its own facilities and resale of another carrier's services throughout the service area for which it seeks designation as an ETC;
- (ii) show that the applicant assumes the obligation to offer each of the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c) to any consumer in the service area for which it seeks designation as an ETC;
- (iii) show that the applicant advertises the availability of, and charges for, such services using media of general distribution;
- (iv) show the service area in which the applicant seeks designation as an ETC;
- (v) contain a statement detailing the method and content of the notice the applicant has provided or intends to provide to the public regarding the application and a brief statement explaining why the proposed notice is reasonable and in compliance with applicable law;

- (vi) contain a copy of the text of the notice;
  - (vii) contain the proposed effective date of the designation; and
  - (viii) contain any other information which the applicant wants considered in connection with the commission's review of its application.
- (C) Contents of application for each common carrier seeking ETC designation and receipt of federal universal service support. A common carrier that seeks to be designated as an ETC and receive federal universal service support shall file with the commission an application complying with the requirements of this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the commission staff and one copy shall be delivered to the Office of Public Utility Counsel. The application shall:
- (i) comply with the requirements of subparagraph (B) of this paragraph;
  - (ii) show that the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
  - (iii) show that the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (2) **Commission processing of application.**
- (A) Administrative review. An application considered under this section may be reviewed administratively unless the presiding officer, for good cause,

determines at any point during the review that the application should be docketed.

- (i) The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after notice is completed, whichever is later.
- (ii) The application shall be examined for sufficiency. If the presiding officer concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application. The earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding officer. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding officer extends that date.
- (iii) While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the telecommunications carrier. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the telecommunications carrier.

- (iv) No later than 20 days after the filing date of the application or the completion of notice, whichever is later, interested persons may provide the commission staff with written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding officer written comments or recommendations regarding the application.
  - (v) No later than 35 days after the proposed effective date of the application, the presiding officer shall issue an order approving, denying, or docketing the application.
- (B) Approval or denial of application.
- (i) An application filed pursuant to paragraph (1)(B) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
    - (I) the provision of service constitutes the services that are supported by the FUSF support mechanisms under 47 U.S.C. §254(c);
    - (II) the applicant will provide service using either its own facilities or a combination of its own facilities and resale of another carrier's services;
    - (III) the applicant advertises the availability of, and charges for, such services using media of general distribution;
    - (IV) notice was provided as required by this section;

- (V) the applicant satisfies the requirements contained in subsection (c) of this section; and
  - (VI) if, in areas served by a rural telephone company, the ETC designation is consistent with the public interest.
- (ii) An application filed pursuant to paragraph (1)(C) of this subsection shall be approved by the presiding officer if the application meets the following requirements:
- (I) the applicant has satisfied the requirements set forth in clause (i) of this subparagraph;
  - (II) the applicant offers Lifeline Service to qualifying low-income consumers in compliance with 47 C.F.R. Part 54, Subpart E; and
  - (III) the applicant offers toll limitation services in accordance with 47 C.F.R. §54.400 and §54.401.
- (C) Docketing. If, based on the administrative review, the presiding officer determines that one or more of the requirements have not been met, the presiding officer shall docket the application.
- (D) Review of the application after docketing. If the application is docketed, the effective date of the application shall be automatically suspended to a date 120 days after the applicant has filed all of its direct testimony and exhibits, or 155 days after the proposed effective date, whichever is later. Three copies of all answers to requests for information shall be filed with the commission within ten days after receipt of the request. Affected

persons may move to intervene in the docket, and a hearing on the merits shall be scheduled. A hearing on the merits shall be limited to issues of eligibility. The application shall be processed in accordance with the commission's rules applicable to docketed cases.

- (E) **Waiver.** In the event that an otherwise ETC requests additional time to complete the network upgrades needed to provide single-party service, access to enhanced 911 service, or toll limitation, the commission may grant a waiver of these service requirements upon a finding that exceptional circumstances prevent the carrier from providing single-party service, access to enhanced 911 service, or toll limitation. The period for the waiver shall not extend beyond the time that the commission deems necessary for that carrier to complete network upgrades to provide single-party service, access to enhanced 911 service, or toll limitation services.

- (i) **Designation of ETC for unserved areas.** If no common carrier will provide the services that are supported by federal universal service support mechanisms under 47 U.S.C. §254(c) to an unserved community or any portion thereof that requests such service, the commission, with respect to intrastate services, shall determine which common carrier or carriers are best able to provide such service to the requesting unserved community or portion thereof and shall order such carrier or carriers to provide such service for that unserved community or portion thereof.

- (j) **Relinquishment of ETC designation.** A common carrier may seek to relinquish its ETC designation.
- (1) **Area served by more than one ETC.** The commission shall permit a common carrier to relinquish its designation as an ETC in any area served by more than one ETC upon:
- (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC;
  - (B) determination by the commission that the remaining eligible telecommunications carrier or carriers can offer federally supported services to the relinquishing carrier's customers; and
  - (C) determination by the commission that sufficient notice of relinquishment has been provided to permit the purchase or construction of adequate facilities by any remaining eligible telecommunications carrier or carriers.
- (2) **Area where the common carrier is the sole ETC.** In areas where the common carrier is the only ETC, the commission may permit it to relinquish its ETC designation upon:
- (A) written notification not less than 90 days prior to the proposed effective date that the common carrier seeks to relinquish its designation as an ETC; and
  - (B) commission designation of a new ETC for the service area or areas.



- (k) **Rural and non-rural carriers' requirements for annual certification to receive FUSF support.** A common carrier serving a rural or non-rural study area shall comply with the following requirements for annual certification for the receipt of FUSF support.
- (1) **Annual certification.** Common carriers must provide the commission with an affidavit annually, on or before September 1st of each year, which certifies that the carrier is complying with the federal requirements for the receipt of FUSF support. Upon receipt and acceptance of the affidavits filed on or before September 1st each year, the commission will certify these carriers' eligibility for FUSF to the FCC and the Federal Universal Service Fund Administrator by October 1st each year.
  - (2) **Failure to file.** Common carriers failing to file an affidavit by September 1st may still be certified by the commission for annual FUSF. However, the carrier is ineligible for support until the quarter following the federal universal service administrator's receipt of the commission's supplemental submission of the carrier's compliance with the federal requirements.
  - (3) **Supplemental certification.** For carriers not subject to the annual certification process, the schedule set forth in 47 C.F.R. §54.313 and 47 C.F.R. §54.314(d) for the filing of supplemental certifications shall apply.
  - (4) **Recommendation for Revocation of FUSF support certification.** The commission may recommend the revocation of the FUSF support certification of any carrier that it determines has not complied with the federal requirements pursuant to 47 U.S.C. §254(e) and will review any challenge to a carrier's FUSF

support certification and make an appropriate recommendation as a result of any such review.

- (l) **Disaggregation of rural carriers' FUSF support.** Common carriers serving rural study areas must comply with the following requirements regarding disaggregation of FUSF support.
  - (1) **Election by May 15, 2002.** On or before May 15, 2002, all rural incumbent local exchange carriers (ILECs) may notify the commission of one of the following elections regarding FUSF support. This election will remain in place for four years from the effective date of certification, pursuant to 47 C.F.R. §54.315, unless the commission, on its own motion, or upon the motion of the rural ILEC or an interested party, requires a change to the elected disaggregation plan:
    - (A) a rural ILEC may choose to certify to the commission that it will not disaggregate at this time;
    - (B) a rural ILEC may seek disaggregation of its FUSF support by filing a targeted plan with the commission that meets the criteria in paragraph (3) of this subsection, subject to the commission's approval of the plan;
    - (C) a rural ILEC may self-certify a disaggregation targeted plan that meets the criteria in paragraphs (3) and (4) of this subsection, disaggregate support to the wire center level or up to no more than two cost zones, or mirror a plan for disaggregation that has received prior commission approval; or
    - (D) if the rural ILEC serves a study area that is served by another carrier designated as an ETC prior to the effective date of 47 C.F.R. §54.315,

(June 19, 2001), the ILEC may only self-certify the disaggregation of its FUSF support by adopting a plan for disaggregation that has received prior commission approval.

- (2) **Abstain from filing.** If a rural ILEC abstains from filing an election on or before May 15, 2002, the carrier will not be permitted to disaggregate its FUSF support unless it is ordered to do so by the commission pursuant to the terms of paragraph (5) of this subsection.
- (3) **Requirements for rural ILECs' disaggregation plans.** Pursuant to the federal requirements in 47 C.F.R. §54.315(e) a rural ILEC's disaggregation plan, whether submitted pursuant to paragraph (1)(B), (C) or (D) of this subsection, must meet the following requirements:
  - (A) the sum of the disaggregated annual support must be equal to the study area's total annual FUSF support amount without disaggregation;
  - (B) the ratio of the per line FUSF support between disaggregation zones for each disaggregated category of FUSF support shall remain fixed over time, except as changes are required pursuant to paragraph (5) of this subsection;
  - (C) the ratio of per line FUSF support shall be publicly available;
  - (D) the per line FUSF support amount for each disaggregated zone or wire center shall be recalculated whenever the rural ILEC's total annual FUSF support amount changes and revised total per line FUSF support and updated access line counts shall then be applied using the changed FUSF support amount and updated access line counts applicable at that point;

- (E) each support category complies with subparagraphs (A) and (B) of this paragraph;
  - (F) monthly payments of FUSF support shall be based upon the annual amount of FUSF support divided by 12 months if the rural ILEC's study area does not contain a competitive carrier designated as an ETC; and
  - (G) a rural ILEC's disaggregation plan methodology and the underlying access line count upon which it is based will apply to any competitive carrier designated as an ETC in the study area.
- (4) **Additional requirements for self-certification of a disaggregation plan.** Pursuant to 47 C.F.R. §54.315(d)(2), a rural ILEC's self-certified disaggregation plan must also include the following items in addition to those items required by paragraph (3) of this subsection:
- (A) support for, and a description of, the rationale used, including methods and data relied upon, as well as a discussion of how the plan meets the requirements in paragraph (3) of this subsection and this paragraph;
  - (B) a reasonable relationship between the cost of providing service for each disaggregation zone within each disaggregation category of support proposed;
  - (C) a clearly specified per-line level of FUSF support for each category pursuant to 47 C.F.R. §54.315(d)(2)(iii);
  - (D) if the plan uses a benchmark, a detailed explanation of the benchmark and how it was determined that is generally consistent with how the level of

support for each category of costs was derived so that competitive ETCs may compare the disaggregated costs for each cost zone proposed; and

(E) maps identifying the boundaries of the disaggregated zones within the study area.

(5) **Disaggregation upon commission order.** The commission on its own motion or upon the motion of an interested party may order a rural ILEC to disaggregate FUSF support under the following criteria:

(A) the commission determines that the public interest of the rural study area is best served by disaggregation of the rural ILEC's FUSF support;

(B) the commission establishes the appropriate disaggregated level of FUSF support for the rural ILEC; or

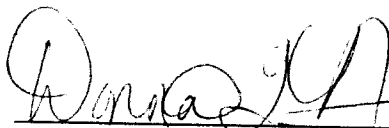
(C) changes in ownership or changes in state or federal regulation warrant the commission's action.

(6) **Effective dates of disaggregation plans.** The effective date of a rural ILEC's disaggregation plan shall be as specified in 47 C.F.R. §54.315.

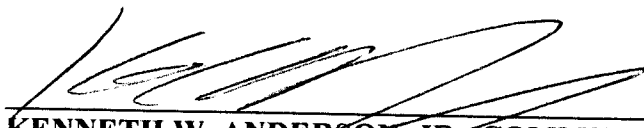
This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority. It is therefore ordered by the Public Utility Commission of Texas that §26.418 relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds, is hereby adopted with no changes to the text as proposed.

SIGNED AT AUSTIN, TEXAS on the 16<sup>th</sup> day of November 2012.

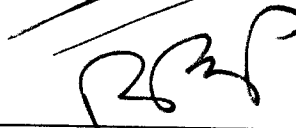
**PUBLIC UTILITY COMMISSION OF TEXAS**



**DONNA L. NELSON, CHAIRMAN**



**KENNETH W. ANDERSON, JR., COMMISSIONER**



**ROLANDO PABLOS, COMMISSIONER**

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION DOCUMENT CONTROL  
AT RICHMOND, APRIL 9, 2004

IN RE:

2004 APR -9 A 11:46

APPLICATION OF VIRGINIA CELLULAR LLC

CASE NO. PUC-2001-00263

For designation as an eligible  
telecommunications provider under  
47 U.S.C. § 214(e) (2)

ORDER INVITING COMMENTS AND/OR REQUESTS FOR HEARING

On December 21, 2001, Virginia Cellular LLC ("Virginia Cellular") filed an application with the State Corporation Commission ("Commission") for designation as an eligible telecommunications carrier ("ETC"). This was the first application by a Commercial Mobile Radio Service ("CMRS") carrier for ETC designation.<sup>1</sup> Pursuant to the Order Requesting Comments, Objections, or Requests for Hearing, issued by the Commission on January 24, 2002, the Virginia Telecommunications Industry Association and NTELOS Telephone Inc. ("NTELOS") filed their respective comments and requests for hearing on February 20, 2002. Virginia Cellular filed Reply Comments on March 6, 2002. Our Order of April 9, 2002, found that § 214(e)(6) of the Act is applicable to Virginia Cellular's application because this Commission has not asserted jurisdiction over CMRS carriers and that Virginia Cellular should apply to the Federal Communications Commission ("FCC") for ETC designation.

Virginia Cellular filed its Petition for Designation as an Eligible Telecommunications Carrier in the State of Virginia with the FCC on April 26, 2002. On January 22, 2004, the FCC released its order designating Virginia Cellular as an ETC in specific portions of its licensed

---

<sup>1</sup> Virginia Cellular is a CMRS carrier as defined in 47 U.S.C. § 153(27) and is authorized as the "A-band" cellular carrier for the Virginia 6 Rural Service Area, serving the counties of Rockingham, Augusta, Nelson, and Highland and the cities of Harrisonburg, Staunton, and Waynesboro.

service area in the Commonwealth of Virginia subject to certain conditions ("FCC's January 22, 2004, Order").<sup>2</sup>

The FCC's January 22, 2004, Order further stated that Virginia Cellular's request to redefine the service areas of Shenandoah Telephone Company ("Shentel") and MGW Telephone Company ("MGW") in Virginia pursuant to § 214(3)(5) of the Telecommunications Act of 1996 ("Act") was granted subject to the agreement of this Commission. On March 2, 2004, the FCC filed its January 22, 2004, Order as a petition in this case.<sup>3</sup>

Section 214(e)(5) of the Act states:

SERVICE AREA DEFINED. - The term "service area" means a geographic area established by a State commission (or the Commission under paragraph (6)) for the purpose of determining universal service obligations and support mechanisms. In the case of an area served by a rural telephone company, "service area" means such company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

In this instance, the FCC has determined that the service areas of Shentel and MGW, which are both rural telephone companies under the Act, should be redefined as requested by Virginia Cellular.<sup>4</sup> The FCC further recognizes that the "Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to determine the redefinition proposal and examine whether it should be approved."<sup>5</sup>

---

<sup>2</sup> CC Docket No. 96-45, *In the Matter of Federal-State Joint Board on Universal Service, Virginia Cellular LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*.

<sup>3</sup> See paragraph 45 of the FCC's January 22, 2004, Order. The FCC, in accordance with § 54.207(d) of its rules, requests that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the FCC's rules. A copy of the petition can be obtained from the Commission's website at: <http://www.state.va.us/scc/caseinfo.htm>.

<sup>4</sup> The FCC denied Virginia Cellular's request to redefine the study area of NTELOS. See paragraph 50 of the FCC's January 22, 2004, Order.

<sup>5</sup> The FCC's January 24, 2004, Order at paragraph 2. (citations omitted)



The Commission finds that interested parties should be afforded the opportunity to comment and/or request a hearing regarding the FCC's petition to redefine the service areas of Shentel and MGW. We note that the FCC believes that its proposed redefinition of these service areas should not harm either Shentel or MGW.<sup>6</sup> However, we request any interested party to specifically address in its comments whether our agreeing to the FCC's proposal to redefine the service areas of Shentel and MGW would harm these companies.

NOW UPON CONSIDERATION of all the pleadings of record and the applicable law, the Commission is of the opinion that interested parties should be allowed to comment or request a hearing regarding the FCC's proposed redefinition of Shentel's and MGW's service areas.

Accordingly, IT IS ORDERED THAT:

(1) Any interested party desiring to comment regarding the redefinition of Shentel's and MGW's service areas may do so by directing such comments in writing on or before May 7, 2004, to Joel H. Peck, Clerk of the State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested parties desiring to submit comments electronically may do so by following the instructions found on the Commission's website: <http://www.state.va.us/scc/caseinfo.htm>.

(2) On or before May 7, 2004, any interested party wishing to request a hearing regarding the redefinition of Shentel's and MGW's service areas shall file an original and fifteen (15) copies of its request for hearing in writing with the Clerk of the Commission at the address set forth above. Written requests for hearing shall refer to Case No. PUC-2001-00263 and shall include: (i) a precise statement of the interest of the filing party; (ii) a statement of the specific action sought to the extent then known; (iii) a statement of the legal basis for such action; and (iv) a precise statement why a hearing should be conducted in the matter.

---

<sup>6</sup> See paragraphs 43 and 44 of the FCC's January 22, 2004, Order.

(3) On or before June 1, 2004, interested parties may file with the Clerk of the Commission an original and fifteen (15) copies of any responses to the comments and requests for hearing filed with the Commission. A copy of the response shall be delivered to any person who filed comments or requests for hearing.

(4) This matter is continued generally.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: each local exchange telephone company licensed to do business in Virginia, as shown on Attachment A hereto; David A. LaFuria, Esquire, Lukas, Nace, Gutierrez & Sachs, Chartered, 1111 19th Street, N.W., Suite 1200, Washington, D.C. 20036; Thomas Buckley, Attorney-Advisor, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554; Virginia Telecommunications Industry Association, c/o Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; L. Ronald Smith, President and General Manager, Shenandoah Telephone Company, P.O. Box 105, Williamsville, Virginia 24487; Lori Warren, Director of Regulatory Affairs, MGW Telephone Company, P.O. Box 459, Edinburg, Virginia 22824-0459; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor, Richmond, Virginia 23219; and the Commission's Office of General Counsel and Divisions of Communications, Public Utility Accounting, and Economics and Finance.